In the Supreme Court of the United States

Supreme Court, U.S.
FILED
JAN 26 1972
E. ROBERT SEAVER, CLERK

OCTOBER TERM, 1971

No. 71-5780

CELESTINO V. RIVAS and ZEFERINO C. SAMANIEGO, individually, and on behalf of all other persons similarly situated,

Appellants,

v.

ROBERT C. COZENS, Director, California Department of Motor Vehicles, and KEITH BALL, Chief, Division of Drivers' Licenses,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JURIS. STATEMENT NOT PRINTED

Motion to Affirm

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Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment of the District Court be affirmed on the ground that the decision of said District Court is so clearly correct as to not warrant further argument.

STATEMENT

This case involves a challenge to California's Financial Responsibility Law (Calif. Veh. Code § 16000, *et seq.*) on the ground that it does not afford the driver an adversary hearing upon the question of fault. As construed by the California Supreme Court, the question of fault is determined by the Department of Motor Vehicles on the basis of written sworn statements submitted by those involved in the accident. *Orr v. Superior Court*, 71 Cal. 2d 220, 227; 454 P.2d 712, 716-717 (1969). It is our contention that the Court below correctly ruled in a manner that warrants no further review, that such procedures do not contravene the requirements of due process and are consonant with the holding of this Court in *Bell v. Burson*, 402 U.S. 535 (1971).

ARGUMENT

I. The Principles Embodied in the Equal Protection Clause Afford the Means for Determining What Issues Are Relevant in a Due Process Adjudication.

In essence, our contention is based upon this elemental formulation of the relationship between equal protection and procedural due process: the precept of *equal protection* provides the principles for determining whether a given classification is constitutionally just (*i.e.*, whether "the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals." *Richardson v. Belcher*, ... U.S. ....., ...; 92 S. Ct. 254, 258 (1971)). It is the function of the mechanisms of *procedural due process*, on the other hand, to insure when the State proceeds to ascertain whether or not one possesses the characteristics or traits that would bring him within the class, that such ascertainment is accomplished in a fundamentally fair manner. See Tussman and tenBroek,

The Equal Protection of the Laws, 37 Calif. L. Rev. 341, 344-345 (1949). Thus, for example, if a law permitted only lawyers to engage in the business of "debt adjusting", the tests of equal protection would be employed to determine if the law establishes a constitutionally valid classification (see *Ferguson v. Skrupa*, 372 U.S. 726 (1963)). If the classification of "lawyers only" was found to be valid, then the mechanisms of procedural due process would, in the event of a dispute, be employed to ascertain whether a given individual possessed the specified trait or characteristic (*e.g.*, being a lawyer), placing him in the class allowed to engage in the particular business.

In the course of this due process determination, the relevant question would, of course, be whether or not the individual was a lawyer. Obviously, the question of whether the non-lawyer individual possessed sufficient skills and competence to conduct the debt adjusting business, or whether his business was "useful and desirable" (see *Ferguson v. Skrupa, supra,* 372 U.S. at 727), even though he was not a lawyer, would be irrelevant, once it had been determined that the State could properly confine the class of eligibles to lawyers. Thus, while due process would assure the individual the right to a hearing (*i.e.*, the right "to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally", *Goldberg v. Kelly,* 397 U.S. 254, 268 (1970)), with respect to the issue of whether or not he is a lawyer, surely due process would not compel the granting of a hearing on issues (such as competence or usefulness of one's business) that are *not* relevant to determining whether one comes within the assumedly proper statutory class.

Thus, in the context of the above formulation, it can be seen that the elements of equal protection operate as a

gauge of relevancy, providing a direction for due process procedures.

Applying this analysis to the present case, it can be stated that California's Financial Responsibility Law creates the following class of persons who are subject to filing a bond or losing their driver's licenses: those drivers involved in an automobile accident (Veh. Code § 16000) who are uninsured (Veh. Code §§ 16020, 16050, 16057), who do not fall within one of the statutory exemptions (Veh. Code § 16050 *et seq.* See *Orr v. Superior Court, supra,* 71 Cal.2d at 225, fn. 5; 454 P.2d at 715, fn. 5), and against whom the Department has received sworn reports which would support a finding of a "reasonable possibility of a judgment" against the driver. *Orr v. Superior Court, supra,* 71 Cal. 2d at 227-228, 454 P.2d at 716-717. See also Veh. Code § 16000 and Clerk's Record (hereafter CR), p. 15. The obvious purpose of Financial Responsibility Laws "is to obtain security from which to pay any judgments against the licensee resulting from the accident." *Bell v. Burson, supra,* 402 U.S. at 540. See also *Mission Ins. Co. v. Feldt,* 62 Cal. 2d 97, 101 (1964), 396 P.2d 709, 712; and see the first opinion filed by the court below.[1] CR 116. It would seem beyond dispute that this is a "legitimate" State goal (see *Ex Parte Poresky,* 290 U.S. 30, 32 (1933); *Continental Baking Co. v. Woodring,* 286 U.S. 352, 365-366 (1932)) and that the class defined by California's law (uninsured drivers involved in accidents against whom there is evidence giving rise to the reasonable possibility of a judgment), manifestly is "rationally related to the achievement of [this goal]. . . ." *Richardson v. Belcher, supra,* ..... U.S. ....., 92

1. In the course of the proceedings below, the Court filed two opinions. The first opinion (hereafter Opinion I) was filed on May 6, 1971, and is set out in the Clerk's Record on pages 107 to 120. The second opinion (hereafter Opinion II) was filed on July 26, 1971 (after this Court had rendered its decision in *Bell v. Burson, supra*) and is set out in the Clerk's Record on pages 142 to 145.

S. Ct. at 258. And even though the delineation of the class in question might not be precisely congruent with the danger involved, the "rational relation" exists if "the danger is *characteristic* of the class named." (Emphasis added.) *Patsone v. Pennsylvania,* 232 U.S. 138, 144 (1914). Certainly, the chance of being subjected to a judgment arising out of a traffic accident is a dominant "characteristic" of the class delineated by the California statute.

Viewing then the classification as being valid, the question is: what issues are relevant to a due process determination of whether the driver comes within the class which has been specified by the law?

II. The Procedure Employed by the State of California for Determining Whether "There Is a Reasonable Possibility of Judgment" Against the Driver Is Consonant with the Requirements of Due Process and the Ruling of This Court in Bell v. Burson.

A. THE FUNCTION OF A HEARING IS TO ASCERTAIN THE TRUTH OF FACTS WHICH ARE IN ISSUE.

Beyond a doubt, as appellants contend, the right to a hearing is a fundamental component of due process, and we in no way seek to deny the significance of the cases cited by them, which so hold. But equally beyond doubt is the elemental proposition that the function of a hearing is to ascertain the truth of the *matters in issue* between the parties. *Aktiebolaget Svenska Handelsbanken v. Chase Nat. Bank,* 69 F. Supp. 833, 834 (S.D.N.Y. 1947); *Cooney v. Cooney,* 25 Cal. 2d 202, 208; 153 P. 334; 88 C.J.S. Trial § 1, p. 20. Thus to assert the undeniable proposition that due process assures one the right to a hearing still leaves unanswered the question of what issues the hearing must cover. Clearly in the present case, the matter of whether the person in question was actually the driver involved in the accident is such an issue (Veh. Code § 16000). So is the question of whether or not he was insured (Veh. Code

§ 16057). Likewise, the question of whether he comes within one of the statutory exemptions is a relevant issue. (See Veh. Code §§ 16052-16054 and Opinion I, CR 108.)

Therefore, at the outset, it must be stated that as to any facts which are in issue under California's Financial Responsibility Law, there is no doubt that *a licensee is entitled to be heard, and will be afforded a hearing,* should he wish to dispute the Department's determination (see Opinion I, CR 115).

B. ACTUAL FAULT IS NOT AN ISSUE UNDER THE FINANCIAL RESPONSIBILITY LAW.

However, the question of whether or not the person was *in fact* at fault is *not* a relevant issue under California statute with respect to the requirement of an evidentiary hearing, because the element in the legislative classification pertinent to the question of fault is whether the Department has received a sworn statement "which, if later believed by a trier of fact, would render a judgment against the licensee reasonably possible . . . ." (Opinion II, CR 144; see also Opinion I, CR 115.) Hence, the relevant issue at an evidentiary hearing under California's statute, is not the truth or falsity of the statement concerning the driver's fault (see *Orr v. Superior Court, supra,* 71 Cal. 2d at 227-228; 454 P.2d at 716-717), but whether the statement was received by the Department and whether it refers to the driver in question. As appropriately noted by the Court below, determining the issue in this manner is "sufficiently appropriate to the nature of the case and that anything further would not significantly contribute to that kind of a determination." (Opinion II, CR 144.)

The separate question of whether the statement was *legally* sufficient to give rise to the "reasonable possibility of a judgment", is, of course, not the type of question that is resolved upon a "Trial of the facts." *Citizens for Allegan*

County, Inc. v. Federal Power Commission 414 F.2d 1125, 1128.

C. CALIFORNIA'S IMPLEMENTATION OF ITS FINANCIAL RESPONSIBILITY LAW CONFORMS TO THIS COURT'S RULING IN BELL V. BURSON.

In *Bell v. Burson*, 402 U.S. 535, this Court declared that before a license can be suspended under the Financial Responsibility Law, the State must make a "determination of the question whether there is a *reasonable possibility* of a judgment being rendered against [the driver]." (Emphasis added.) 402 U.S. at 542. See also 402 U.S. at 540.

Unlike the Georgia procedures which this Court was considering in *Bell*, California, as noted, *already* expressly requires that the Department of Motor Vehicles determine if there is a "reasonable possibility of a judgment" being rendered against the driver prior to suspending his license. *Orr v. Superior Court, supra*, 71 Cal. 2d at 226-227; 454 P.2d at 716-717. This determination is based upon an evaluation of the written sworn statements of the parties and witness to the accident which are submitted to the Department by the drivers (Veh. Code § 16000; *Orr v. Superior Court, supra*, 71 Cal. 2d at 227; 454 P.2d at 716).

The Department does not resolve conflicts in the submitted evidence but determines "from the accident reports which involved drivers are obligated to make . . . and from other evidence submitted to it whether there is a reasonable possibility that a judgment may be recovered against the involved driver . . . ." *Orr v. Superior Court, supra*, 71 Cal. 2d at 27; 454 P.2d at 716-717. (See Opinion II, CR 144.) However, a driver is certainly entitled, when filing his accident report with the Department, to submit in that report all the evidence he has in support of his version of the accident, and he is entitled to review the evidence upon which the Department makes its determina-

tion, *Orr v. Superior Court, supra,* 71 Cal. 2d at 228, 454 P.2d at 717.[2] Further, he is entitled to assert the contention that the "body of evidence" in question could not support a finding of a "reasonable possibility of a judgment." *Id.* But as we have noted, this is a *legal* contention (see *Lincoln National Life Insurance Company v. Roosth,* 306 F.2d 110, 112-113 (1962)), and, of course, not one requiring a trial to resolve issues of *fact. Citizens for Allegan County, Inc. v. Federal Power Commission, supra,* 414 F.2d at 1128.[3]

In confirming that California's procedures fulfilled the requirements of *Bell,* the Court below observed: "the prior hearing provided by the California statute, based upon required accident reports and other evidence and *involving, not a resolution of conflicting versions* bearing on the ultimate question of liability, but merely the narrow (but constitutionally sufficient) issue whether there is any evidence which, if later believed by a trier of fact, would render a judgment against the licensee reasonably possible, is likewise sufficiently appropriate to the nature of the case and that anything further *would not significantly contribute to that kind of a determination.*" (Emphasis added.) Opinion II, CR 144.

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2. Appellants have asserted that they are not afforded the opportunity to see the evidence against them. Jurisdictional Statement, pp. 6, 8-9. It is clearly the law in California that the driver is entitled to see such evidence. *Orr v. Superior Court, supra,* 71 Cal. 2d at 228; 454 P.2d at 717. If an agent of the Department of Motor Vehicles is acting contrary to this law, there is a remedy in the State court. However, this does not involve the question of the constitutionality of the Financial Responsibility Law, as construed by the California Supreme Court.

3. Should appellants dispute the Department's legal contention in this regard, they are entitled to court review. *Orr v. Superior Court, supra,* 71 Cal. 2d at 226-227; Veh. Code § 14400, and to a stay of any suspension order pending this review. Code Civ. Proc. § 1094.5(f). See *Jennings v. Mahoney,* ..... U.S. ....., ...; 92 S. Ct. 180, 181 (1971), where this Court noted the absence of provisions for a stay under the Utah statute.

But appellants contend that, in addition to presenting evidence establishing their own version of the accident (as is presently provided for under California procedures), they should be permitted to personally appear to "confront and cross-examine adverse witnesses" (Jurisdictional Statement, pp. 8-9). Hence under the procedure sought for by appellants, not only must the Department decide whether there is evidence which, if believed, by the trier of fact could support a judgment (see *Orr v. Superior Court, supra,* 71 Cal. 2d 227-228; 454 P.2d at 717), it must also, at an actual hearing, weigh the evidence and *resolve conflicts; i.e.,* it must decide which of two conflicting versions of the incident to accept. (See Jurisdictional Statement, pp. 9, 10.)

Obviously, this is a "full adjudication of the question of liability," no less than that which would be "made in litigation between the parties involved in the accident." See *Bell v. Burson, supra,* 402 U.S. at 540. But this Court in *Bell,* explicitly stated:

> "Clearly, however, *the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability.* That adjudication can only be made in litigation between the parties involved in the accident. Since the only purpose of the provisions before us is to obtain security from which to pay any judgments against the licensee resulting from the accident, we hold that procedural due process will be satisfied by *an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee."* (Emphasis added.) 402 U.S. at 540.

California makes precisely this inquiry. *Orr v. Superior Court, supra,* 71 Cal. 2d at 226-227; 454 P.2d at 716-717.

Since this inquiry, as we have noted, clearly corresponds to an appropriate statutory classification, the requirements of equal protection and due process indicate that the inquiry need be no broader.

D. IN THE CASE OF PRE-TRIAL HEARINGS IN OTHER AREAS OF THE LAW, ULTIMATE CULPABILITY IS OFTEN EXCLUDED AS AN ISSUE.

Since the function of the Financial Responsibility Law is to set up a fund that will await disposition upon the parties resolving their dispute at the ultimate adversary hearing, *i.e.*, the lawsuit itself, *Bell v. Burson, supra*, 402 U.S. at 540, the function of the Department is much like that of a court ruling on a demurrer or a motion to dismiss. There the court does not conduct an adversary hearing and resolve conflicts in the evidence. It merely decides whether the alleged evidence, if believed, would support a cause of action. *Alcorn v. Anbro Engineering, Inc.*, 2 Cal. 3d 493, 496; *Madison v. Purdy*, 410 F.2d 99, 100-101 (1969). This is a question of law, not of fact. *MacKay v. Clark Rig Bldg. Co.*, 5 Cal. App. 2d 44, 55 (1935). The ultimate resolution of evidentiary conflicts is, of course, accomplished at the ultimate trial, *i.e.*, "in litigation between the parties...."

Note that this is virtually the same process engaged in by the Department of Motor Vehicles as directed by the California Supreme Court:

> "The department need not decide as between conflicting versions of the accident whether the driver was in fact at fault; if there is any credible evidence on the basis of which he could reasonably be considered culpable, such evidence, which could be believed by the trier of fact in a lawsuit, will suffice to support a determination that it is reasonably possible that a judgment may be recovered against the driver." *Orr v. Superior Court, supra*, 71 Cal. 2d at 227; 454 P.2d at 717.

Another cogent analogy to the financial responsibility procedures are those procedures in the criminal law for

indictment or information *prior to a trial on the merits.* And while one is entitled to a hearing to dismiss an indictment or information (Rule 12 FRCP, 18 U.S.C.; Pen. Code § 995), it is the well-established rule in both the California and Federal courts that the court hearing such a motion may *not* consider evidence to determine the truth or falsity of the charges. *Universal Milk Bottle Service v. United States,* 188 F.2d 959, 962 (1951, 6th Cir.); *People v. Cornette,* 158 Cal. App. 2d 724, 728; 322 P.2d 1001 (1958). As stated by the California Court of Appeal: "On a motion to dismiss under this section neither the trial court nor this court is authorized to weigh the evidence and determine the conflicts. The sole duty is to determine whether there was sufficient evidence presented to the committing magistrate, conflicting or otherwise, which would establish a reasonable probability of defendants' guilt." *People v. Cornette,* 158 Cal. App. 2d, *supra,* at 728; 322 P.2d at 1004. Again, note the marked similarity between this language defining the issues on a motion to dismiss and the State Supreme Court's language in *Orr v. Superior Court, supra,* 71 Cal. 2d at 227-228; 454 P.2d at 717, defining the pertinent issues under the Financial Responsibility Law. And just as the question of actual fault or guilt is irrelevant upon hearing demurrers or motions to dismiss an indictment, *actual* fault is not an issue under the Financial Responsibility Law. *Bell v. Burson, supra,* 402 U.S. at 540, 542; *Orr v. Superior Court, supra,* 71 Cal. 2d at 227-228; 454 P.2d 716-717.

Thus, it can be seen that, in terms of a total legal process, the ultimate issue of culpability is not necessarily relevant at every *intermediate* hearing that might occur during the course of this total process. And certainly, due process can require no more than a hearing on those issues that are relevant.

III. This Honorable Court in Bell v. Burson Recognized That the Problem of Administrative Expense "Must Be Kept in Mind."

California suspends more than 4,000 licenses every *month* (or 53,253 during the 12 months ending in April 1971), pursuant to implementing the Financial Responsibility Law. (Report of General Activities, California Department of Motor Vehicles, 4/30/71.) If the Department would be required to hold a hearing in each of these cases, they would be conducting more trials under this one statute than *all* of the Superior Courts in the entire State of California conducted on *all* contested matters during fiscal 1969-1970.[4] Such hearing would not involve merely the aggrieved party coming before the agency and telling his story, but as contemplated by appellants, *both sides and their witness* would have to be subpoenaed before the Department to give appellants the opportunity to "confront and cross-examine the evidence against them" (see Jurisdictional Statement, p. 9). The expenditure of time and resources necessary to conduct over 4,000 of such proceedings each month is obviously monumental. Can it be said that short of compulsory insurance, this is the only alternative available? The decision in *Bell* would seem to indicate otherwise: "Finally [a state] may reject all of the above and devise an entirely new regulatory scheme. The area of choice is wide . . . ." 402 U.S. at 543.

While it is not doubted that burdens of substantial costs and time cannot afford a justification for dispensing with the requirements of due process, this Court in *Bell* did

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4. During fiscal 1969-1970, the Superior Courts disposed of 46,433 contested cases after trial. Judicial Council of California, 1971 Annual Report, p. 152.

direct that this "problem . . . must be kept in mind" (402 U.S. at 540-541). When the "problem" achieves the formidable dimensions involved in the present case, it surely must be a factor in determining what elements a procedure must embody in order to satisfy the demands of due process. (See *Johnson v. New Jersey,* 384 U.S. 719, 731 (1966), stating that the disruption that would be caused by numerous retrials of criminal defendants is a factor to be considered in denying retroactive application of constitutionally required procedures.)

Surely, the procedures chosen by California, which contemplate a hearing upon all relevant issues, which do involve a determination of "whether there is a reasonable possibility of a judgment", and which are analogous to various procedures followed by the courts, conform to the demands of due process and constitute a valid means of implementing the Financial Responsibility Laws.

CONCLUSION

In the present case the Court below noted the reasonableness of the classification delineated by the California statute (Opinion I, CR 113-117) and that the parties could be heard on any issue relevant under that classification (Opinion I, CR 115). However, it further recognized that since actual fault was not such an issue, due process did not compel an evidentiary hearing upon that question (Opinion I, CR 15; Opinion II, CR 144). Thus, we earnestly contend that the Court below correctly responded to the constitutional principles controlling in this case.

It is, therefore, respectfully submitted that the order and judgment of the Court below (CR 146-147) be affirmed.

Dated: January 17, 1972

Respectfully submitted,

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Supplemental Brief in Reply to Appellants' Briefs of March 8, 1972, and March 15, 1972

APPENDICES NOT PRINTED

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SUBJECT INDEX

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Supplemental Brief in Reply to Appellants' Briefs of March 3, 1972, and March 13, 1972

ARGUMENT

I. The Rios Case Pending Before the California Supreme Court Is Explicitly Confined to the Constitutional Issues Raised by the Decisions of the United States Supreme Court and Thus Does Not Warrant This Court's Deferring Its Decision in the Present Case.

Appellants adamantly assert that the State Supreme Court's granting a hearing in the *Rios* case has reopened State issues. That such an assertion is little more than a

stratagem, is pointedly confirmed by the petition to the State Supreme Court for hearing in the *Rios* case. This petition *nowhere* mentions *State* grounds in support of its contentions. On the contrary, the petition does specifically state that the Department's duty "arises out of the due process clause of the Fourteenth Amendment to the *United States Constitution.*"[1]

The petition has cited the four State Supreme Court decisions occurring after *Orr v. Superior Court,* 71 Cal. 2d 220; 454 P.2d 712 (the Court's 1969 decision construing the Financial Responsibility Law), to persuade the State court to re-examine its holding in *Orr: Randone v. Appellate Department,* 5 Cal. 3d 536; 488 P.2d 13; *Blair v. Pitchess,* 5 Cal. 3d 258; 486 P.2d 1242; *Cline v. Credit Bureau of Santa Clara Valley,* 1 Cal. 3d 908; 464 P.2d 125; *McCallop v. Carberry,* 1 Cal. 3d 903; 464 P.2d 122. (petition ¶ VII. See also petition pages 11, 13 and 19). These cases declared invalid various State statutes which allowed prejudgment attachments without a hearing. The speciousness of appellants' contention that State grounds have been reopened because the California Supreme Court granted hearing in *Rios* becomes apparent, however, when it is noted that the State Supreme Court explicitly declared, in each one of these four cases, that it was the *United States* Supreme Court's construction of the due process clause in *Sniadach v. Family Finance Corp.,* 395 U.S. 337 (1969), that compelled the invalidation of the State statutes. For example in *McCallop* the court said: "We are persuaded that this type of prejudgment wage garnishment falls within the rationale of *Sniadach,* and must be held to constitute a taking of property in violation of procedural due process." *McCallop v.*

1. Paragraph VII of the Petition for Hearing in the California Supreme Court in *Rios v. Cozens* (emphasis added). For the convenience of this Court, a copy of the *Rios* petition (hereafter petition) has been submitted with this brief as Appendix A.

Carberry, supra, 1 Cal. 3d at 907; 464 P.2d at 125. And again in *Cline* it was stated: "the prejudgment wage garnishment procedure attacked by plaintiff must be ruled invalid under the rationale of *Sniadach.*" *Cline v. Credit Bureau of Santa Clara Valley, supra,* 1 Cal. 3d at 909; 464 P.2d at 126. And as if to dispel any doubt on this point, the State Supreme Court in *Randone* declared: "We do no more here than follow the principle of *Sniadach,* as later expressed in our own cases of *McCallop, Cline* and *Blair.*" *Randone v. Appellate Department, supra,* 5 Cal. 3d at 564; 488 P.2d at 32. See also *Blair v. Pitchess, supra,* 5 Cal. 3d at 277; 486 P.2d at 1255.

Appellants appear to confuse the process of construing a statute with the process of determining whether a statute as construed meets constitutional standards. Less than three years ago in *Orr,* the State Supreme Court definitively set forth its *construction* of the financial responsibility statute. It is quite apparent that that Court's taking the *Rios* case is not now for the purpose of statutory construction, but for the purpose of determining whether that statute, as already construed, satisfies the *United States* Supreme Court's constitutional "rationale of *Sniadach*" and of *Bell v. Burson,* 402 U.S. 535 (1971). Surely, this Honorable Court need not defer its decision, pending the State Court's application of constitutional principles which this Court itself has enunciated.

The decision of this Court is obviously then of paramount concern to the California Court in any ruling it makes on the Financial Responsibility Law; but it should also be noted that the decision of this Court is also of immense concern to the large number of other states with similar laws whose validity is also under question.

We would thus most earnestly urge this Court not to defer its decision in the present matter, and most certainly not to favor appellants' proposal to vacate the judgment below and remand to the District Court, as this disposition could result in a grossly wasteful duplication procedures.

II. It Is the Official Policy of the Department of Motor Vehicles That a Driver Is Entitled to Examine the Reports and Evidence Against Him in Order to Determine if the Department's Action Was Proper.

In their brief in opposition to our Motion to Affirm, appellants contended that the Department refuses to permit inspection of evidence against the driver unless he files an action in court. They supported this contention with a letter from the Department refusing such inspection.

In our brief in support of our Motion to Affirm, *we conceded that the driver does have the right of inspection* and that if agents of the Department are denying him this right, such action is contrary to the law (brief in support of motion, pp. 7-8, fn. 2). To confirm that this view of the law is the official policy of the California Department of Motor Vehicles, and to avoid any future erroneous applications of the law by departmental employees, the Director of the Department of Motor Vehicles has issued a memorandum to all employees involved with the procedures in question expressly stating that a driver may see the reports against him and that he need not first file a court action. We have submitted herewith, a copy of this memorandum as Appendix B. Since we are not disputing the driver's rights in this connection and since the Department is officially committed to the implementation of these rights, it would seem that this problem is not an issue in the present case.

III. The Driver Is Entitled to a Stay Pending Court Review of the Department's Determination.

Appellants point out that, under California's Code of Civil Procedure section 1094.5(f), a court has discretion to deny a stay "if the Court is satisfied that it is against the public interest". By characterizing the availability of a stay as merely a "speculative possibility" (appellants' brief dated March 3, 1972, p. 4), appellants imply that the remedy is illusory and is subject to the caprice of the Court. However, as is apparent from the words of the statute, the Court's discretion is subject to the clearly specified criterion that continuance of the license would be against the public interest. This writer can personally represent that in the hundreds of matters he has handled, which involve California's Code of Civil Procedure section 1094.5, the denial of a stay is the rare exception. Further, with respect to the scores of cases brought to challenge the Financial Responsibility Law, this writer is unaware of *any case* where a stay has been denied. This result is consistent with, if not compelled by this Court's recognition in *Bell v. Burson, supra,* 402 U.S. at 542, that license suspension under the Financial Responsibility Law does *not* constitute an "emergency situation."

Finally, we would note that the provision is consistent with the rule concerning bail pending appeal, which is not a matter of right but is subject to denial through the exercise of the Court's discretion in appropriate cases. *Carbo v. United States,* 82 S. Ct. 662, 666 (1962).

Thus, the assertion that the full measure of procedural due process is somehow obviated, because the granting of a stay pending Court review is subject to the salutary exercise of Court discretion, is to say the least, quite tenuous.

CONCLUSION

This case very clearly presents the question of whether the Financial Responsibility Law utilizing affidavits as the means for determining a "reasonable possibility" of fault, "affords the procedural due process required by *Bell v. Burson.*" See *Jennings v. Mahoney,* 404 U.S. 25, 26 (1971). This Court has characterized this as "plainly a substantial question." *Jennings v. Mahoney, ibid.* The spurious "state issues" belatedly raised by appellants should not impede this Court from affording a prompt resolution to the question which is of great significance to California and to those numbers of other states concerned with the proper implementation of their financial responsibility statutes.

We would, therefore, respectfully submit that appellants' proposal to vacate the judgment of the Court below be rejected and that said judgment be affirmed.

Dated: March 21, 1972

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1971

SEP 18 1972
MICHAEL RODAK, JR., CLERK

No. 71-5780

CELESTINO V. RIVAS and ZEFERINO C. SAMANIEGO, individually, and on behalf of all other persons similarly situated,

Appellants,

vs.

ROBERT C. COZENS, Director, California Department of Motor Vehicles, and KEITH BALL, Chief, Division of Drivers' Licenses,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Supplemental Brief Pertaining to Decision of California Supreme Court in Rios v. Cozens

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In the Supreme Court of the United States

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CELESTINO V. RIVAS and ZEFERINO C. SAMANIEGO,
individually, and on behalf of all
other persons similarly situated,
Appellants,

vs.

ROBERT C. COZENS, Director,
California Department of Motor Vehicles, and
KEITH BALL, Chief, Division of Drivers' Licenses,
Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

Supplemental Brief Pertaining to Decision of California Supreme Court in Rios v. Cozens

ARGUMENT

I. The Decision of the California Supreme Court in Rios v. Cozens Was Based Solely on Federal Grounds.

The appellants have previously brought to the attention of this Court the case of *Rios v. Cozens* (Sac. 7916), accepted for hearing by the California Supreme Court on February 10, 1972 (appellants' memorandum re related

State court case and suggestion for summary disposition, p. 1; hereafter appellants' memo). Appellants argued that since the State Supreme Court could decide the matter on State grounds, this Court should remand the matter back to the District Court to await the ruling of the State court (appellants' memo, pp. 2-3). This Court did not, of course, remand the matter to the District Court. However, this Court apparently deferred ruling on our motion to affirm the District Court until the California Supreme Court issued its decision in *Rios v. Cozens.*

On August 15, 1972, the California Supreme Court issued its decision in *Rios.* It was adverse to the respondents herein, holding that the procedure of determining possible culpability by means of written affidavits violated due process. (A copy of the Court's decision is set out in the appendix to this supplemental brief; hereafter *Rios* decision.) However, what is most pertinent here is that the Court did not reach this conclusion on *State* grounds but explicitly based its decision on the due process clause as construed by *this Court* in *Bell v. Burson,* 402 U.S. 535 (1971), and *Jennings v. Mahoney,* 404 U.S. 25 (1971).

As the California Supreme Court states: "We conclude that the determination of possible culpability by the department without affording the licensee an opportunity for a hearing does not comply with the requirements of due process, in view of the United States Supreme Court decisions in *Bell v. Burson* . . . and *Jennings v. Mahoney.* . . ." (*Rios* decision, p. 2). The Court further states: "We are called upon, then, to examine the procedure followed in this state to determine if it satisfies the requirements of *Bell v. Burson* . . . ." (*Rios* decision, p. 5). And finally: "We conclude that this procedure does not comply with the command of *Bell v. Burson,* supra, . . . that a hearing be granted prior to license suspension for a failure to comply with the financial responsibility law." (*Rios* decision, pp. 6-7)

It is thus manifest that as a result of the *Rios* decision, the only issues extant as to the propriety of the California procedures are *Federal* in nature and are those which from the outset have been before this Court in the present case.

It is our contention, of course, that these Federal issues were incorrectly determined by the California Supreme Court but were correctly determined in the decision of the three-judge Federal court, which is the subject of our present motion to affirm.[1]

II. The California Supreme Court Incorrectly Determined That the Procedure Followed by California Violates the Federal Due Process Clause.

A. THIS HONORABLE COURT HAS EXPLICITLY LEFT OPEN THE QUESTION OF WHETHER CONSIDERATION OF THE ISSUE OF POSSIBLE FAULT, ON THE BASIS OF WRITTEN SUBMISSIONS, SATISFIES THE REQUIREMENTS OF DUE PROCESS.

In almost tautological fashion, the State Supreme Court concluded in essence that a personal hearing on the issue of possible fault is required by due process because this Court in *Bell v. Burson* said so. (See *Rios* decision, pp. 2, 7, 9.) But, of course, those procedures evaluated by this Court in *Bell v. Burson,* 402 U.S. 535 (1971), totally omitted any consideration of the issue of fault (*Bell v. Burson, id.* at 536-537). The question of the sufficiency of the California system which does provide for a consideration of the issue of fault, but on the basis of written submissions, was thus left open (see *Rivas* opinion II, CR 143-144).

That this is *still* an open question was made explicit by this Court's ruling last February in *Richardson v. Wright,* 405 U.S. 208 (1972), where it was declared that an administrative process which involved the determination of issues on the basis of written submissions (see *Richardson v.*

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1. We shall also shortly, be filing with this Honorable Court, a Petition for Certiorari in *Rios v. Cozens.*

Wright, id. at 211, 213), "must have a reasonable opportunity to evolve procedures to meet needs as they arise." *Richardson v. Wright, id.*, 405 U.S. at 209.

It is thus clear that the decision of the California Supreme Court goes beyond what is currently established by the decisions of this Court.

B. THE CALIFORNIA SUPREME COURT TOTALLY NEGLECTED THE ISSUE OF WHETHER THE CLASS DELINEATED BY CALIFORNIA'S PROCEDURES WAS BASED UPON A REASONABLE CLASSIFICATION.

We can without reservation agree with the California Supreme Court in its conclusion that "[a] person's interest in the retention of his driver's license and in the use of his motor vehicle represents a sufficiently important benefit to justify the requirement that he be accorded a hearing, before he is deprived of those rights . . . ." (*Rios* decision, p. 4). What we have been contending, however, is that such a hearing *need only encompass those issues relevant to determining whether one falls within the specified class* so long as the class is reasonably related to a proper governmental purpose. We have noted that the terms delineating the class in the present case are: any uninsured driver involved in accidents, and against whom there is a sworn report which would support the finding of a "reasonable possibility of a judgment" against such driver. Clearly, this classification does not comprehend a determination of the truth or falsity of the contentions relating to fault. See *Orr v. Superior Court,* 71 Cal.2d 220, 227-228 (1969).

The California Supreme Court in no way purported to demonstrate that this was an improper classification whose relationship to the goal of affording security for possible future judgments was somehow too attenuated to satisfy constitutional standards.

In declaring that the licensee should be permitted to show at an adversary hearing that he would not be found at fault (*Rios* decision, p. 8), the California Supreme Court merely demonstrated that it would desire a class more immediately related to the issue of fault. The Court did *not* demonstrate that the present class, though more remote, was constitutionally insufficient.

C. THE REQUIREMENT OF AN ADVERSARY HEARING ON THE QUESTION OF FAULT IS INCONSISTENT WITH THIS COURT'S DECLARATION IN BELL V. BURSON THAT THE INQUIRY INTO FAULT NEED NOT TAKE THE FORM OF A FULL ADJUDICATION OF THE QUESTION OF LIABILITY.

Under California's procedure, while a personal hearing might be had with respect to such questions as identity of the driver, the amount of damages, the existence of insurance, etc., the issue of fault is determined on the basis of the written affidavits submitted by the parties and other reports. The Department does not resolve conflicts between differing versions of the accident, but determines only if there is any credible evidence which would suffice to render a judgment reasonably possible. *Orr v. Superior Court, supra,* 71 Cal.2d at 227-228. This determination is subject to court review. *Orr v. Superior Court, id.* at 228. In evaluating this procedure in the present case, the three-judge District Court below concluded: "We are of the opinion that the prior hearing provided by the California statute, based upon required accident reports and other evidence and involving, not a resolution of conflicting versions bearing on the ultimate question of liability, but merely the narrow (but constitutionally sufficient) issue whether there is any evidence which, if later believed by a trier of fact, would render a judgment against the licensee reasonably possible, is . . . sufficiently appropriate to the nature of the case and that anything further would not significantly contribute to

that kind of a determination." (*Rivas* opinion II at CR 144.) This conclusion, implicitly recognizing the propriety of the classification involved in California's procedures, would appear to correctly reflect this Honorable Court's determination that procedures involved in the resolution of the fault issue "need not take the form of a *full adjudication* of the question of liability." (Emphasis added.) *Bell v. Burson, supra,* 402 U.S. at 540.

On the other hand, the California Supreme Court concluded that procedures minimally sufficient under the Constitution require that the driver be permitted to personally present his own evidence and testimony, the testimony of his witnesses and presumably the right to cross-examine the injured party who submits opposing evidence (*Rios* decision, pp. 7-9).

Such a process clearly entails the weighing of conflicting versions of the event and the resolving of such conflicts. Certainly such a procedure involving the appearance of the injured party, the personal presentation of one's case against liability, and the rebuttal of the opposing case would appear to be indistinguishable from a "full adjudication of the question of liability." Declaring the necessity for such a procedure in the context of the financial responsibility laws ignores the preliminary nature of such proceedings, which involve a determination of liability *ancillary to the ultimate determination of liability* to "be made in litigation between the parties involved in the accident" (see *Bell v. Burson, supra,* 402 U.S. at 540). As we have previously noted, preliminary proceedings in similar contexts traditionally involve summary determinations of the ultimate issue without resorting to a process of testing and weighing conflicting versions of the incident in question (see brief in support of our Motion to Affirm, pp. 10-11).

And where as *Goldberg v. Kelly,* 397 U.S. 254 (1970), establishes, as an element of due process, the right to a personal hearing, this holding was applicable to proceedings involving the ultimate determination of the issues in question, and not as in the present case to proceedings which are but a preliminary step toward the ultimate trial of the issues.

D. CALIFORNIA'S PROCEDURES PROVIDE A MEANINGFUL FORUM FOR THE DETERMINATION OF THE ISSUE OF "POSSIBLE" CULPABILITY.

There is perhaps the implication in the California Supreme Court's refusal to characterize the present procedures as "meaningful," that the Department makes merely a *pro forma* determination of "possible fault" on the basis of written reports in a manner in which the licensee experiences little external difference between a procedure where no determination of fault was made and the present procedure which does involve this determination.

However, this implication is dispelled by the records of the Department, which cogently demonstrate that the law, as construed in *Orr v. Superior Court, supra,* 71 Cal.2d 220, has been implemented in a significantly "meaningful" manner. In the Director's monthly report of December 1968, it is noted on page 11 in the appendix attached hereto,[2] that during 1968 (the last full year *prior* to the Department's considering fault as required by *Orr*), there were 97,829 orders of suspension issued out of a total of 630,097 accident reports received, or a suspension rate of about 15%. (Suspensions were occurring at approximately this rate the previous year. Director's Report, December 1968.) Comparing this to the figures for 1970 (the first full year *after*

2. The portions of the Director's monthly reports of December 1967, December 1968, December 1970, and December 1971, dealing with the Financial Responsibility Law have been set out in Pages 11-13 of the appendix to this brief.

the *Orr* decision), it can be seen that the percentage rate of suspensions dropped to about 9%, *i.e.* about a 40% drop in such rate (Director's Report, December 1970), and suspensions at approximately the same rate have continued through 1971 (Director's Report, December 1971). It should also be noted that this significant drop in the suspension rate has occurred in spite of the fact that this Court in *Orr* ruled that "the department need not decide as between conflicting versions of the accident whether the driver was in fact at fault . . . [nor] is the department called upon to make sophisticated judgments upon any claims of contributory negligence or of last clear chance etc. which may arise . . . ." *Orr v. Superior Court, supra,* 71 Cal.2d at 227. Hence, it is apparent that the Department is diligently examining the reports and making considered determinations upon the question of "possible fault."

Here it should be noted that there is now no doubt that the driver is entitled *before the department acts,* to review and examine all of these reports submitted against him. (*Rios* decision, p. 9).

Thus the driver is afforded ample opportunity to rebut "errors or misstatements" and to supply any "pertinent matters" omitted from the opposing reports. (See *Rios* Decision, p. 7, n. 5).

It is difficult to see how these procedures, in view of the opportunities they afford the driver, and the frequency of results favorable to him, could fail to be denominated as "meaningful."

We would thus earnestly suggest that the District Court below was quite correct in observing that the Department's procedures are "sufficiently appropriate to the nature of the case and that anything further would not significantly contribute to that kind of a determination." (*Rivas* opinion II at CR 144.)

CONCLUSION

The processes under which the Fnancial Responsibility Law are implemented in California constitute a fair and logically relevant system for ascertaining those against whom the issuance of a judgment is "reasonably possible." The characteristics of the affected drivers constitute a class manifestly related to the law's purposes. The procedures available to the driver afford him an effective opportunity to present his version of the event.

This Honorable Court has noted that "[t]he alternative methods of compliance [with due process requirements] are several. . . . The area of choice is wide . . . ." *Bell v. Burson, supra,* 402 U.S. at 542-543. Surely, the Constitution does not foreclose from the states the utilization of an alternative as patently reasonably as that employed by California in meeting the grave problems associated with traffic injuries. We would thus respectfully urge this Court to affirm the judgment below.

Dated: September 11, 1972

Respectfully submitted,

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Appendix

In the Supreme Court of the State of California in Bank

Filed Aug. 15, 1972, G. E. Bishel, Clerk
Sac. 7916

Federico Rios, a Minor, etc.,
Petitioner,
v.
Robert C. Cozens, as Director, etc., et al.,
Respondents.

Under the financial responsibility laws (Veh. Code, §§ 16000-16563)[1] the Department of Motor Vehicles (hereinafter the department) will suspend the license of a driver who is involved in an automobile accident which has resulted in bodily injury or property damage in excess of $200 unless he either deposits security with the department sufficient in the opinion of the department to satisfy any final judgment against him up to a stated maximum or establishes his exemption from the security requirement by one of several methods, such as by showing that he was insured at the time of the accident.[2] However, as a condition of the suspension, the department must make a determination that there is a reasonable possibility that a judgment may be recovered against the driver, based upon his potential culpability. (Orr v. Superior Court (1969) 71 Cal.2d 220, 227-228.)

1. All code references are to the Vehicle Code.

2. In addition to suspension of the license of the driver of a vehicle involved in an accident, the financial responsibility law provides that the owner of the car must surrender his registration card and license plates to the department and store the car at his own expense if neither he nor the person who drove the car with his permission can comply with the security deposit requirement or establish an exemption. (§ 16100 et seq.)

The question involved in this proceeding is whether the driver is entitled to a hearing on the issue of his potential culpability prior to the suspension of his license or whether the department may make its determination, as it now does, merely on the basis of written accident reports which the persons involved in the accident are required to file (§ 16000) without affording the driver an opportunity to personally appear. We conclude that the determination of possible culpability by the department without affording the licensee an opportunity for a hearing does not comply with the requirements of due process, in view of the United States Supreme Court decisions in Bell v. Burson (1971) 402 U.S. 535 and Jennings v. Mahoney (1971) 404 U.S. 25.

Petitioner is a minor who was involved in an automobile accident on March 18, 1971. The driver of the other vehicle in the accident filed a report with the department claiming that he had incurred property damage of $260. Petitioner also filed an accident report. The department, apparently on the basis of these reports, found there was a reasonable possibility that a judgment might be recovered against petitioner as a result of the accident. Since petitioner was uninsured and could not deposit security, his license was suspended. He asserted that he was not responsible for the accident and demanded a hearing to determine whether there was any likelihood that he would be found liable.

Upon the refusal of the department to grant a hearing, he filed a petition for a writ of mandate in an appellate court through his guardian ad litem. The petition seeks, on behalf of petitioner and others similarly situated, to compel respondents, the department and its director, to revoke the order of suspension issued to petitioner and others whose licenses were suspended without hearing, and to afford them notice and an opportunity to be heard on the question of their possible culpability.

Petitioner relies on numerous recent cases in which the United States Supreme Court and this court have recognized that an individual is constitutionally entitled to a hearing prior to being deprived of a significant interest. (Goldberg v. Kelly (1970) 397 U.S. 254, 266; Sniadach v. Family Finance Corp. (1969) 395 U.S. 337, 342; Randone v. Appellate Department (1971) 5 Cal.3d 536, 547.) This principle is applicable to a plethora of vital personal and property rights (see Randone v. Appellate Department, 5 Cal.3d 536, 548, fn. 8), but it has most frequently been applied in this state to invalidate statutes affording a creditor prejudgment remedies against a debtor without prior notice or hearing (see, e.g., Blair v. Pitchess (1971) 5 Cal.3d 258; McCallop v. Carberry (1970) 1 Cal.3d 903; Cline v. Credit Bureau of Santa Clara Valley (1970) 1 Cal.3d 908).

The rule explicated in the foregoing cases is applicable to the instant circumstances. A person's interest in the retention of his driver's license and in the use of his motor vehicle represents a sufficiently important benefit to justify the requirement that he be accorded a hearing, before he is deprived of those rights, to determine whether there is a reasonable possibility that a judgment will be recovered against him.

Petitioner emphasizes that the rural and urban poor, who cannot afford to purchase insurance or to post security, are frequently faced with license suspension under the financial responsibility law, and that a person deprived of the right to drive may forfeit his employment and suffer other disabilities. If there had been any lingering doubt about the importance of the right to a driver's license, it has been dispelled by Bell v. Burson, supra, 402 U.S. 535, in which the court stated, "Once licenses are issued, as in petitioner's case, their continued possession may become essential in

the pursuance of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees." (402 U.S. at p. 539.)

We observe, as a second factor justifying a pre-suspension hearing, that the primary purpose of the financial responsibility law is not to assure that careless drivers are denied the use of the highways—since the most grossly negligent drivers who can post security or are exempt from complying with the requirement may retain their licenses—but, rather, to afford monetary protection to those who suffer injury or property damage by virtue of the carelessness of financially irresponsible drivers. (Barrera v. State Farm Mut. Automobile Ins. Co. (1969) 71 Cal.2d 659, 671.) We do not denigrate the desirability of making whole the victims of automobile accidents. But viewed in this economic context, the purpose of the statutes under consideration bears a remarkable relationship to prejudgment creditor's remedies and therefore does not justify a difference in treatment with regard to the right to a presuspension hearing.

Nevertheless, respondents argue, this court decided in Escobedo v. State of California (1950) 35 Cal.2d 870, 876-877 and Orr v. Superior Court, supra, 71 Cal.2d 220, 224-225, that due process is not violated by the suspension of a license without a prior hearing if the department's action is subject to subsequent judicial review.

Two years after our decision in Orr v. Superior Court, supra, 71 Cal.2d 220, the United States Supreme Court heard Bell v. Burson, supra, 402 U.S. 535, in which the precise question was whether the State of Georgia could validly suspend the driver's license of an uninsured motorist who could not post security without affording him a hearing prior to revocation on the question of his responsibility for

the mishap. The high court determined that a driver may not constitutionally be deprived of his license without a prior hearing to determine whether there is a reasonable possibility that a judgment would be rendered against him as a result of the accident. Insofar as a determination of possible fault is required before suspension our earlier opinions in Escobedo v. State of California, supra, 35 Cal.2d 870 and Orr v. Superior Court, supra, 71 Cal.2d 220, are consistent with the principles of *Bell.*

The significance of *Bell,* however, is that the decision not only requires a prior determination of culpability as a condition of suspension but that it leaves no doubt such a determination must be made in the context of a hearing. Georgia actually provided a hearing prior to suspension, but the proceeding was confined to such questions as whether the driver was in fact involved in the accident and whether he came within any of the statutory exemptions. The high court held that in providing a forum to decide the question of possible liability Georgia could elect to include this issue at the hearing already provided by its laws (402 U.S. at pp. 542-543), that the additional expense to the state was not a sufficient reason to deny a hearing (402 U.S. at p. 540), and that the hearing required by due process must be meaningful (402 U.S. at pp. 541-542). The opinion concludes that the failure of Georgia's statutory scheme to afford the petitioner a hearing prior to suspension on the question of liability denied him due process of law.

We are called upon, then, to examine the procedure followed in this state to determine if it satisfies the requirements of Bell v. Burson, supra, 402 U.S. 535. Under our statutes, as stated above, any driver who is involved in an automobile accident which results in bodily injury or in property damage in excess of $200 must file a written acci-

dent report with the department within 15 days after the mishap. (§ 16000.)[3] The report contains an account of the driver's version of the accident, as well as information indicating whether he was insured, and estimating the amount of damage incurred. The department makes its determination of possible liability from the substance of these reports. A licensee is not entitled to a personal hearing, and it is not even clear that he is permitted, prior to suspension, to examine the information upon which the department has based its decision.[4]

We conclude that this procedure does not comply with the command of Bell v. Burson, supra, 402 U.S. 535, that a hearing be granted prior to license suspension for a fail-

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3. Section 40833 provides that neither this report nor the department's action thereon shall be referred to in any way or be admissible as evidence of the negligence or due care of any party at the trial of any action at law to recover damages.

4. According to petitioner, it is the department's policy to refuse to reveal the contents of the opposing driver's report unless and until a court action is filed seeking review of the suspension. The Attorney General, representing the department, acknowledges that this has been the department's policy in the past and states that it was due to a misunderstanding of the law. This lapse has now been corrected, it is asserted, and orders have been issued to department employees that a driver involved in an accident is entitled to see the reports filed by other parties and witnesses prior to the time he files an *action for court review*. Although this policy statement does not provide that a driver threatened with suspension may review the evidence submitted to the department prior to the effective date of *suspension by the department*, we assume that such is the intent of the order, however inartfully drawn, in view of the Attorney General's concession in his brief that it would be "unthinkable" to permit an agency to base its decision upon evidence not disclosed to the affected party.

ure to comply with the financial responsibility law.[5] In Jennings v. Mahoney, supra, 404 U.S. 25, decided a few months after *Bell,* the appellant challenged Utah's procedure for determining whether her driver's license should be suspended under that state's financial responsibility law. There, as here, the issue of possible liability for her accident was determined from the accident reports filed with the appropriate department, and the motorist was not given an opportunity to offer evidence and cross-examine witnesses. It was held that there was "plainly a substantial question whether the Utah statutory scheme on its face affords the procedural due process required by *Bell v. Burson*". (404 U.S. at p. 26.) However, the Supreme Court did not find the issue ripe for decision since the trial court, apparently doubtful of the due process qualities of the administrative proceedings, had stayed the suspension order and conducted a full judicial evidentiary hearing on the propriety of the suspension.[6] At least two jurisdictions

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5. Petitioner asserts that the department's procedure provides him with no hearing whatever. He states that because the department is required to decide only whether it is reasonably possible that he was liable for the accident, almost any discrepancy between opposing reports would justify a decision against him. The others involved in the accident may omit pertinent matters or may simply falsify their reports in an attempt to force petitioner to pay their claims of damage or suffer the suspension of his license. If he is not afforded the opportunity to challenge these errors or misstatements at a hearing before the department he is forever precluded from a meaningful opportunity to defend his version of the accident to avoid a suspension. He is not entitled to a trial de novo even if he seeks court review of the department's determination since on review a court must rely solely upon evidence submitted to the department. (Orr v. Superior Court, supra, 71 Cal.2d 220, 228.)

6. Richardson v. Wright (1972) 405 U.S. 208 is not helpful. Faced squarely with the issue of the right to an oral presentation before loss of welfare benefits, the court decided, in view of new departmental regulations, that "the appropriate course is to withhold judicial action pending reprocessing, under the new regulations, of the determinations here in dispute." The dissents of Justices Brennan, Douglas, and Marshall to the order stressed the continued viability of Goldberg v. Kelly, supra, 397 U.S. 254.

have interpreted *Bell* as imposing a requirement for a hearing prior to suspension under the financial responsibility law. (Pollion v. Lewis (N.D.Ill. 1971) 332 F.Supp. 777; MacBeth v. State of Utah (C.D.Utah 1971) 332 F. Supp. 1191.)

Respondents do not seriously contend that the procedure followed by the department constitutes a hearing on the issue of possible culpability. They assert, however, that because the scope of the determination to be made by the department is restricted to whether there is credible evidence of a reasonable possibility of the driver's culpability and the question of actual fault is not in issue, it is sufficient if the department makes its determination on the basis of the written reports.

This posture is in conflict with both Bell v. Burson, supra, 402 U.S. 535, and Jennings v. Mahoney, supra, 404 U.S. 25. Manifestly that the department is required only to decide whether there is a reasonable possibility of a judgment against the driver does not render a hearing inconsequential. Certainly it is not inconceivable that a licensee may be able to demonstrate to the department, if given the opportunity to do so at a hearing, that there is no reasonable possibility that a judgment will be rendered against him.[7]

It necessarily follows that Escobedo v. State of California, supra, 35 Cal.2d 870, and Orr v. Superior Court, supra, 71 Cal.2d 220, are overruled insofar as they hold that a licensee is not entitled to a hearing, prior to the suspension of his license, to determine whether there is a reasonable

7. Respondents place great reliance upon Rivas v. Cozens (N.D. Cal. 1971) 327 F.Supp. 867, which was reconsidered in a memorandum decision not published in the reports. Although the district court in its memorandum decision found the California procedure to be in conformity with *Bell*, that decision was rendered prior to the filing of the Supreme Court's opinion in *Jennings*, and we do not find the district court's reasoning to be persuasive.

possibility that a judgment may be recovered against him. We hold that a hearing is required and that at such a hearing the licensee is entitled to review the reports or other evidence upon which the department contemplates determining that he is possibly responsible for the accident, and to present reports or testimony to establish his claim of nonculpability, all within reasonable due process procedures which the department may employ.

The licensee must be afforded the opportunity to make his presentation personally rather than in writing, under the holding of the United States Supreme Court in Goldberg v. Kelly, supra, 397 U.S. 254, 268-269. In *Goldberg* it was held that the New York Department of Social Services must permit a welfare recipient to appear personally at a hearing prior to the termination of public assistance payments. The high court reasoned (inter alia) that the opportunity to make a written presentation was insufficient because many recipients do not possess the educational attainment necessary to write effectively and would find it difficult to obtain professional assistance. The same rationale is applicable to the situation involved in the present case. Many persons threatened with license suspension lack the ability to make an adequate written presentation of their position to the department and lack the resources to obtain professional help to forcefully prepare their assertions.

Petitioner is entitled to a writ of mandate commanding respondents to revoke the order suspending his license and to provide him with an opportunity for a hearing. He also seeks to compel respondents to reinstate the licenses of those persons whose driving privileges were previously suspended under the financial responsibility law, until respondents grant them a hearing on the issue of their possible culpability. We do not deem it necessary to require respondents to vacate suspension orders previously issued, other than

the order issued to petitioner. However, those whose licenses are currently under suspension because of their failure to comply with the requirements of the financial responsibility law are entitled to a hearing if they so request.

Finally, petitioner prays for damages allegedly suffered as the result of the illegal suspension of his license. He cites no authority and has presented neither evidence nor argument to justify an award of damages in this mandamus proceeding. The denial of a damage award is proper.

Let a writ of mandate issue directing respondents to revoke the order suspending petitioner's license and to provide petitioner, upon due notice, a hearing on the suspension of his license.

MOSK, J.

WE CONCUR:

WRIGHT, C.J.
MCCOMB, J.
PETERS, J.
TOBRINER, J.
BURKE, J.
SULLIVAN, J.

D.D.L. Activities — December 1967

FINANCIAL RESPONSIBILITY

	This Month	*Past 12 Months*
Reports of Accident Received (SR-1's)	60,764	753,600
% Establishing Insurance	83.3%	88.1%
% Depositing Security	1.0%	0.8%
% Establishing Other Exemptions	3.8%	6.9%
% Total Compliance	88.1%	95.8%
Security Deposited	$232,578	$3,052,904
Security Disbursements Authorized	$ 28,202	$ 293,396
Security Refunds Authorized	$237,002	$2,480,036
Security Requirement Requests Issued	9,950	122,916
Orders of Suspension Issued	8,938	114,000
Suspensions Terminated Within One Year		
Suspensions Set Aside 2,732		24,320*
Reinstatements Made 1,716	4,448	52,615
Suspensions Terminated After One Year by Filing Proof	903	13,999
Other Suspensions Terminated After One Year	1,840	24,755
Incoming Mail, Other than Reports of Accident	44,318	674,377

*These figures commenced April 1, 1967.

D.D.L. Activities — December 1968

FINANCIAL RESPONSIBILITY

	This Month	*Past 12 Months*
Reports of Accident Received (SR-1's)	51,114	630,097
% Establishing Insurance	86.6%	87.6%
% Depositing Security	0.8%	0.9%
% Establishing Other Exemptions	5.5%	5.4%
% Total Compliance	92.9%	93.9%
Security Deposited	$251,036	$2,924,131
Security Disbursements Authorized	$ 22,942	$ 280,341
Security Refunds Authorized	$173,080	$2,157,910
Security Requirement Requests Issued	8,792	105,460
Orders of Suspension Issued	8,424	97,829
Suspensions Terminated Within One Year		
Suspensions Set Aside 1,601		27,398
Reinstatements Made 2,127	3,728	25,048
Suspensions Terminated After One Year by Filing Proof	782	12,756
Other Suspensions Terminated After One Year	1,692	18,771
Incoming Mail, Other than Reports of Accident	56,083	642,367

D.D.L. Activities — December 1969

FINANCIAL RESPONSIBILITY

	This Month	*Past 12 Months*
Reports of Accident Received (SR-1's)	51,416	681,229
% Establishing Insurance	86.9%	87.6%
% Depositing Security	.4%	.5%
% Establishing Other Exemptions	14.9%	10.4%
% Total Compliance	102.2%	98.5%
Security Deposited	$ 89,703	$2,033,994
Security Disbursements Authorized	$ 16,877	$ 253,988
Security Refunds Authorized	$225,822	$2,623,171
Security Requirement Requests Issued	4,147	82,658
Orders of Suspension Issued	4,314	78,764
Suspensions Terminated Within One Year		
Suspensions Set Aside 2,523		40,316
Reinstatements Made 5,127	7,650	26,603
Suspensions Terminated After One Year by Filing Proof	57	7,069
Other Suspensions Terminated After One Year	4,929	19,459
Incoming Mail, Other than Reports of Accident	43,916	691,447

D.D.L. Activities — December 1970

FINANCIAL RESPONSIBILITY

	This Month	*Past 12 Months*
Reports of Accident Received (SR-1's)	45,084	561,178
% Establishing Insurance	87.7%	85.8%
% Depositing Security	.4%	.4%
% Establishing Other Exemptions	2.3%	14.5%
% Total Compliance	90.4%	100.7%
Security Deposited	$88,048	$1,111,072
Security Disbursements Authorized	$13,652	$ 154,821
Security Refunds Authorized	$91,234	$1,212,474
Security Requirement Requests Issued	4,900	60,725
Orders of Suspension Issued	5,355	51,774
Suspensions Terminated Within One Year	1,587	
Suspensions Set Aside 1,320		21,143
Reinstatements Made 267		52,492
Suspensions Terminated After One Year by Filing Proof	7	1,304
Other Suspensions Terminated After One Year	7	32,135
Incoming Mail, Other than Reports of Accident	65,193	640,145

FINANCIAL RESPONSIBILITY

	This Month	*Past 12 Months*
Reports of Accident Received (SR-1's)	46,932	551,948
% Establishing Insurance	83.4%	84.1%
% Depositing Security	.5%	.5%
% Establishing Other Exemptions	1.9%	2.2%
% Total Compliance	85.8%	86.8%
Security Deposited	$108,890	$1,216,497
Security Disbursements Authorized	$ 15,160	$ 160,670
Security Refunds Authorized	$ 93,737	$ 977,011
Security Requirement Requests Issued	5,707	65,589
Orders of Suspension Issued	4,572	54,779
Suspensions Terminated Within One Year	2,342	
Suspensions Set Aside 1,288		17,265
Reinstatements Made 1,054		8,989
Suspensions Terminated After One Year by Filing Proof	0	241
Other Suspensions Terminated After One Year	0	1
Incoming Mail, Other than Reports of Accident	63,880	747,246

RIVAS ET AL. *v.* COZENS, DIRECTOR, DEPARTMENT OF MOTOR VEHICLES OF CALIFORNIA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 71-5780. Decided November 13, 1972

Vacated and remanded. See: 327 F. Supp. 867.

PER CURIAM.

The appellants' supplemental brief filed October 14, 1972, recites:

> "The California Supreme Court's decision in *Rios* [*v. Cozens*, 7 Cal. 3d 792, 499 P. 2d 979 (1972),] has been given full prospective and retroactive effect. Cal. Sup. Ct. Order Denying Stay Pending Appeal, filed August 30, 1972. Accordingly, the individual petitioners herein, Celestino V. Rivas and Zeferino Samaniego, have now been accorded the opportunity for a personal evidentiary hearing regarding the suspension of their driver's licenses."

Accordingly the motion for leave to proceed *in forma pauperis* is granted, the judgment is vacated, and the case is remanded to the United States District Court for the Northern District of California to determine whether this case has become moot.